

111TH CONGRESS
1ST SESSION

H. R. 1797

To reform certain provisions of section 404 of the Sarbanes-Oxley Act of 2002 to make compliance with that section more efficient, with the goal of maintaining United States capital market global competitiveness.

IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 2009

Mr. MEEKS of New York introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To reform certain provisions of section 404 of the Sarbanes-Oxley Act of 2002 to make compliance with that section more efficient, with the goal of maintaining United States capital market global competitiveness.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Compete Act of 2009”.

1 **SEC. 2. INTERNAL CONTROL REPORTING AND EVALUA-**
2 **TION.**

3 Subsection (b) of section 404 of the Sarbanes-Oxley
4 Act of 2002 (15 U.S.C. 7262(b)) is amended to read as
5 follows:

6 “(b) INTERNAL CONTROL REPORTING AND EVALUA-
7 TION.—

8 “(1) AUDITOR ATTESTATION AND REPORT.—

9 With respect to the internal control assessment re-
10 quired by subsection (a), each registered public ac-
11 counting firm that prepares or issues the audit re-
12 port for the issuer shall, at the interval determined
13 under paragraph (2), attest to, and report on, the
14 assessment made by the management of the issuer.
15 The attestation and report on the management as-
16 sessment shall focus on the process and system man-
17 agement used to identify and manage risks, identify
18 and implement key controls, and come to a conclu-
19 sion on the effectiveness of the internal controls over
20 financial reporting. Such attestation and report shall
21 not include a separate opinion on the outcome of the
22 assessment, that is, the auditor shall not issue a sep-
23 arate (pass/fail) opinion on the effectiveness of man-
24 agement’s internal controls over financial reporting.
25 Any such attestation shall not be the subject of a
26 separate engagement.

1 “(2) INTERVALS FOR ATTESTATION AND RE-
2 PORT.—The Commission’s regulations under this
3 section shall require that the attestation and report
4 required by paragraph (1) be performed during an
5 initial reporting period, and then at 3-year intervals.
6 Such regulations shall require a shorter interval in
7 the event of a major shift in the company’s structure
8 or performance, such as a merger, a significant fi-
9 nancial restatement, evidence of fraud, or other such
10 events as determined by the Commission.

11 “(3) STANDARDS FOR ATTESTATION AND RE-
12 PORT.—

13 “(A) RISK-BASED EVALUATION.—An attes-
14 tation made under this subsection shall be made
15 in accordance with standards for attestation en-
16 gagements issued or adopted by the Board.
17 Such standards shall require that the audit of
18 the management assessment of the internal
19 control of the issuer shall be designed, on the
20 basis of the probability of risk and magnitude
21 of potential harm, to focus on those controls
22 that are critical to the accuracy of the financial
23 statements of the issuer, and shall be consistent
24 with the materiality standards prescribed by the
25 Commission under paragraph (4). Such stand-

ards shall require that the determination by the auditor of the controls that create the greatest risk to the company shall be done in consultation with management of the issuer and shall identify those greatest risks on bases of the characteristics of the industry within which the issuer operates.

“(B) RELIANCE ON THE WORK OF OTHERS.—The standards issued or adopted by the Board for purposes of implementing the requirements of this subsection shall eliminate duplication of audits and examinations by—

“(i) allowing registered public accounting firms performing attestations and reports under this subsection to rely on examinations and inspections conducted by Federal and State regulatory agencies to the extent those examinations and inspections focus on the issuer’s risk-based internal controls;

“(ii) where the issuer has engaged a third-party accountant to test and provide management’s assessment of the internal control systems, permitting—

1 “(I) the third-party accountant
2 to work with registered public ac-
3 counting firms performing attesta-
4 tions and reports under this sub-
5 section on determining the controls to
6 be tested and the scope of work;

7 “(II) the registered public ac-
8 counting firms performing attesta-
9 tions and reports under this sub-
10 section to rely heavily on the work of
11 the third-party accountant during the
12 attestation engagement to avoid repet-
13 itive testing; and

14 “(III) management of the issuer
15 to communicate openly with the reg-
16 istered public accounting firms per-
17 forming attestations and reports
18 under this subsection on all aspects of
19 its internal controls.

20 “(C) DEFINITION.—For purposes of sub-
21 paragraph (B)(ii), the term ‘third-party ac-
22 countant’ means a registered public accounting
23 firm other than the registered public accounting
24 firm that is engaged to perform the attestation
25 and report under this subsection.

1 “(4) MATERIALITY STANDARD.—The Commis-
 2 sion shall develop a standard of materiality for the
 3 conduct of the assessment and report on an internal
 4 control under this subsection that shall be based on
 5 whether the internal control has a material affect on
 6 the company’s financial statements and is significant
 7 to the issuer’s overall financial status.”.

8 **SEC. 3. SMALLER PUBLIC COMPANY EXEMPTION FROM IN-**
 9 **TERNAL CONTROL PROVISION.**

10 Section 404 of the Sarbanes-Oxley Act of 2002 (15
 11 U.S.C. 7262) is amended by adding at the end the fol-
 12 lowing new subsection:

13 “(c) SMALLER PUBLIC COMPANY EXEMPTION.—

14 “(1) VOLUNTARY COMPLIANCE.—A smaller
 15 public company shall not be subject to the require-
 16 ments of this section with respect to any annual re-
 17 port unless such company voluntarily elects to com-
 18 ply with such requirements, in accordance with regu-
 19 lations prescribed by the Commission. Any smaller
 20 public company that does not elect to comply with
 21 such requirements with respect to an annual report
 22 shall, in accordance with such regulations, disclose
 23 that noncompliance in such report.

24 “(2) DEFINITION.—For purposes of paragraph
 25 (1), the term ‘smaller public company’ means an

1 issuer, for which an annual report is required by sec-
2 tion 13(a) or 15(d) of the Securities Exchange Act
3 of 1934 (15 U.S.C. 78m(a) or 78o(d)), that—

4 “(A) has a total market capitalization at
5 the beginning of the relevant reporting period
6 of less than \$700,000,000;

7 “(B) has total product and services rev-
8 enue for that reporting period of less than
9 \$125,000,000; or

10 “(C) has, at the beginning of the relevant
11 reporting period, fewer than 1500 beneficial
12 owners.”.

13 **SEC. 4. COMPETITION FOR AUDITING SERVICES.**

14 (a) **STUDY REQUIRED.**—The Commission and the
15 Board shall conduct a study examining the lack of, and
16 impediments to, robust competition for the performance
17 of audits for issuers.

18 (b) **SUBJECTS OF STUDY.**—The study required by
19 this section shall examine—

20 (1) the causes for, and the measures that may
21 be taken to alleviate, the concentration of audit per-
22 formance in only four large public accounting firms
23 capable of servicing the larger issuers;

1 (2) the extent to which the Commission and the
2 Board may, under existing statutes, take reasonable
3 steps—

4 (A) to increase the number of qualified ac-
5 counting firms; and

6 (B) to eliminate de minimis conflict of in-
7 terest provisions; and

8 (3) methods that may be undertaken for en-
9 couraging—

10 (A) the largest public accounting firms to
11 partner with smaller public accounting firms;
12 and

13 (B) coalitions among smaller public ac-
14 counting firms to compete for business for larg-
15 er and more complex issuers.

16 (c) REPORT.—Within 6 months after the date of en-
17 actment of this Act, the Commission and the Board shall
18 submit a joint report on the study required by this section
19 to the Committee on Financial Services of the House of
20 Representatives and the Committee on Banking, Housing,
21 and Urban Affairs of the Senate. Such report shall—

22 (1) contain the results of the examination of
23 each of the subjects identified in subsection (b);

24 (2) make recommendations to the accounting
25 industry of measures that may be undertaken under

1 existing statutes, regulations, and standards to al-
2 leviate the concentration described in subsection
3 (b)(1);

4 (3) identify the measures that the Commission
5 and the Board should undertake to alleviate such
6 concentration; and

7 (4) make any recommendations to the Congress
8 for changes in the laws administered by the Com-
9 mission and the Board that the Commission or the
10 Board consider appropriate and necessary on the
11 basis of the examination.

12 **SEC. 5. PRINCIPALS-BASED GUIDANCE STUDY.**

13 (a) STUDY REQUIRED.—The Commission and the
14 Board shall conduct a study comparing and contrasting
15 the principles-based Turnbull Guidance under the securi-
16 ties laws of Great Britain to the implementation of section
17 404 of the Sarbanes-Oxley Act of 2002.

18 (b) REPORT.—Within one year after the date of en-
19 actment of this Act, the Commission and the Board shall
20 submit a joint report on the study required by this section
21 to the Committee on Financial Services of the House of
22 Representatives and the Committee on Banking, Housing,
23 and Urban Affairs of the Senate. Such report shall—

24 (1) compare—

1 (A) the relative accounting and other costs
2 of—

3 (i) the principles-based Turnbull
4 Guidance under the securities laws of
5 Great Britain; and

6 (ii) the implementation of section 404
7 of the Sarbanes-Oxley Act of 2002; in rela-
8 tion to

9 (B) the relative—

10 (i) reduction in the level of risk to in-
11 vestors; and

12 (ii) increase in the level of investor
13 confidence in the financial statements of
14 issuers; and

15 (2) recommend to the Congress appropriate
16 measures to alleviate accounting and other costs in
17 relation to the reduction of such risk and the in-
18 crease in such confidence.

19 **SEC. 6. DEFINITIONS.**

20 For purposes of this Act, the terms “audit”,
21 “Board”, “Commission”, “issuer”, and “public account-
22 ing firm” have the meanings given such terms in section
23 2 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201).

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